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10/603,318 06/25/2003 Beng Sim Chuah J3676(C) 3089

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EXAMINER

BARHAM, BETHANY P

ART UNIT	PAPER NUMBER
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1615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS 03/08/2007 PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/603,318

Applicant(s)

CHUAH ET AL.

Examiner

Bethany P. Barham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 36-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of the Applicants' Amended Claims and Remarks filed on 09/25/2006. The rejections of record are **maintained**.

MAINTAINED REJECTIONS:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,221,534 ('534) in view of US Patent 6,403,070 B1 ('070) and further in view of US Patent 5,750,096 A ('096).

The limitations of claims 1-7 are taught by '534 in view of '070 and further '096:

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- '534 teach a composition comprising hydrocarbon oils and mineral oils (column 6, lines 24-33), alkylene/arlene diblock and triblock polymers (Table 1, column 2, lines 34-46, and column 6, lines 24-33), and an aromatic ester oil, such as benzoate ester or Finsolv TM (column 6, lines 34-44). The composition advanced by '534 can be used as an **antiperspirant** (column 7, line 6). The "structurant system," comprised of di or triblock copolymers, can be in a concentration ranging from 1 - 20% (column 6, lines 34-36 and Claim 1). Furthermore, according to '534, the proportion of chemicals can be altered based on the desire to produce a fragile, flexible, transparent, translucent or opaque gel (column 6, lines 45-53). It is the examiner's position that modifying and optimizing the proportion of chemical components, based on the particular application, without adversely affecting the skin is within the scope of the skilled artisan. In short, one of ordinary skill in the art at the time the invention was made would have the ability to refine and optimize the composition.
- '534 does not teach an antiperspirant composition comprising an organic wax or a particulate antiperspirant active.
- However, '070 teach the advantage of adding an organic wax, such as microcrystalline wax, to a gel-based deodorant composition (column 5, lines 40-52). According to '070, organic waxes, such as microcrystalline wax, can advantageously modify the consistency of deodorant compositions (column 5, lines 40-52). '070 also teaching a deodorant composition comprising a "deodorant active agent" may be chosen from **antiperspirant** compounds, such

as alum salts, aluminum salts, zirconium salts and aluminum and zirconium salts (column 2, line 19-50).

- '534 and '070 do not teach a composition comprising a particulate antiperspirant active.

- However, '096 teach a composition comprising from about 0.5 - 60% of an **antiperspirant** active in the form of particulate solids (column 8, lines 52-65).

According to '096, salts of aluminum and zirconium are preferred antiperspirant actives (column 9, lines 9-14). In addition, according to '096, a composition comprising antiperspirant particles of less than 100 microns provides a relatively low amount of visible residue performance.

- It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of '534, '070, and '096. One of ordinary skill in the art would have been motivated to add an organic wax, such as microcrystalline wax, to the composition proposed by '534 because both teach antiperspirant compositions comprising mineral oil and diblock or triblock copolymers, and the organic waxes as taught by '070 can advantageously modulate consistency of deodorant compositions, one of ordinary skill in the art. Based on the teachings of '070, there is a reasonable expectation that the addition of an organic wax to a deodorant-based composition would effectively modulate the consistency of said composition. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made add an organic wax to the invention advanced by '534 in view of the teachings of

'070. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was to combine the teachings of '534, '070 with '096 and produce a deodorant composition comprising hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, particulate deodorant active agents, and an aromatic ester oil, such as benzoate ester or Finsolv TM. The person of ordinary skill in the art would have been motivated to add particulate deodorant active agents to the deodorant composition advanced by '534 because a composition comprising antiperspirant particles of less than 100 microns provides a relatively low amount of visible residue. Based on the teachings of '096, '070, and '534, it is expected that the addition of antiperspirant particles to a composition comprising organic waxes, hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, and aromatic ester oils would result in an effective deodorant with a relatively low amount of visible residue performance. Based on the teachings of '096, it is also expected that salts of aluminum and zirconium would be effective antiperspirant actives.

The limitations of claims 8-14 are taught by '534 in view of '070 and further '096:

- '534 teach a composition comprising hydrocarbon oils and mineral oils (column 6, lines 24-33), alkylene/arlene diblock and triblock polymers (Table 1, column 2, lines 34-46, and column 6, lines 24-33), and an aromatic ester oil, such as benzoate ester or Finsolv TM (column 6, lines 34-44). The composition advanced by '534 can be used as an **antiperspirant** (column 7, line 6).

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- Furthermore, according to '534, the proportion of chemicals can be altered based on the desire to produce a fragile, flexible, transparent, translucent or opaque gel (column 6, lines 45-53). It is the examiner's position that modifying and optimizing the proportion of chemical components, based on the particular application, without adversely affecting the skin is within the scope of the skilled artisan. In short, one of ordinary skill in the art at the time the invention was made would have the ability to refine and optimize the composition.

The limitations of claims 15-17 are taught by '534 in view of '070 and further '096:

- The "structurant system," comprised of di or triblock copolymers, can be in a concentration ranging from 1 - 20% (column 6, lines 34-36 and Claim 1).
- '534 does not teach an antiperspirant composition comprising an organic wax or a particulate antiperspirant active.
- However, '070 teach the advantage of adding an organic wax, such as microcrystalline wax, to a gel-based deodorant composition (column 5, lines 40-52). According to '070, organic waxes, such as microcrystalline wax, can advantageously modify the consistency of deodorant compositions (column 5, lines 40-52). '070 also teaching a deodorant composition comprising a "deodorant active agent" may be chosen from **antiperspirant** compounds, such as alum salts, aluminum salts, zirconium salts and aluminum and zirconium salts (column 2, line 19-50).
- '534 and '070 do not teach a composition comprising a particulate antiperspirant active.

- However, '096 teach a composition comprising from about 0.5 - 60% of an **antiperspirant** active in the form of particulate solids (column 8, lines 52-65). According to '096, salts of aluminum and zirconium are preferred antiperspirant actives (column 9, lines 9-14). In addition, according to '096, a composition comprising antiperspirant particles of less than 100 microns provides a relatively low amount of visible residue performance.
- It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of '534, '070, and '096. One of ordinary skill in the art would have been motivated to add an organic wax, such as microcrystalline wax, to the composition proposed by '534 because both teach antiperspirant compositions comprising mineral oil and diblock or triblock copolymers, and the organic waxes as taught by '070 can advantageously modulate consistency of deodorant compositions, one of ordinary skill in the art. Based on the teachings of '070, there is a reasonable expectation that the addition of an organic wax to a deodorant-based composition would effectively modulate the consistency of said composition. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made add an organic wax to the invention advanced by '534 in view of the teachings of '070. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was to combine the teachings of '534, '070 with '096 and produce a deodorant composition comprising hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, particulate deodorant active

agents, and an aromatic ester oil, such as benzoate ester or Finsolv TM. The person of ordinary skill in the art would have been motivated to add particulate deodorant active agents to the deodorant composition advanced by '534 because a composition comprising antiperspirant particles of less than 100 microns provides a relatively low amount of visible residue. Based on the teachings of '096, '070, and '534, it is expected that the addition of antiperspirant particles to a composition comprising organic waxes, hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, and aromatic ester oils would result in an effective deodorant with a relatively low amount of visible residue performance. Based on the teachings of '096, it is also expected that salts of aluminum and zirconium would be effective antiperspirant actives.

The limitations of claims 18-23 are taught by '534 in view of '070 and further '096:

- '534 is taught above.
- '534 does not teach an antiperspirant composition comprising an organic wax or a particulate antiperspirant active.
- However, '070 teach the advantage of adding an organic wax, such as microcrystalline wax, to a gel-based deodorant composition (column 5, lines 40-52). According to '070, organic waxes, such as microcrystalline wax, can advantageously modify the consistency of deodorant compositions (column 5, lines 40-52). '070 teaches that natural waxes and polyethylene waxes can be added and all have a melting point greater than 80 °C (column 5, lines 47-52).

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'070 also teaching a deodorant composition comprising a "deodorant active agent" may be chosen from **antiperspirant** compounds, such as alum salts, aluminum salts, zirconium salts and aluminum and zirconium salts (column 2, line 19-50).

- '534 and '070 do not teach a composition comprising a particulate antiperspirant active.
- However, '096 teach a composition comprising from about 0.5 - 60% of an **antiperspirant** active in the form of particulate solids (column 8, lines 52-65). According to '096, salts of aluminum and zirconium are preferred antiperspirant actives (column 9, lines 9-14). In addition, according to '096, a composition comprising antiperspirant particles of less than 100 microns provides a relatively low amount of visible residue performance.
- It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of '534, '070, and '096. One of ordinary skill in the art would have been motivated to add an organic wax, such as microcrystalline wax, to the composition proposed by '534 because both teach antiperspirant compositions comprising mineral oil and diblock or triblock copolymers, and the organic waxes as taught by '070 can advantageously modulate consistency of deodorant compositions, one of ordinary skill in the art. Based on the teachings of '070, there is a reasonable expectation that the addition of an organic wax to a deodorant-based composition would effectively modulate the consistency of said composition. As such, it would have been

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obvious to one of ordinary skill in the art at the time the invention was made add an organic wax to the invention advanced by '534 in view of the teachings of '070. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was to combine the teachings of '534, '070 with '096 and produce a deodorant composition comprising hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, particulate deodorant active agents, and an aromatic ester oil, such as benzoate ester or Finsolv TM. The person of ordinary skill in the art would have been motivated to add particulate deodorant active agents to the deodorant composition advanced by '534 because a composition comprising antiperspirant particles of less than 100 microns provides a relatively low amount of visible residue. Based on the teachings of '096, '070, and '534, it is expected that the addition of antiperspirant particles to a composition comprising organic waxes, hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, and aromatic ester oils would result in an effective deodorant with a relatively low amount of visible residue performance. Based on the teachings of '096, it is also expected that salts of aluminum and zirconium would be effective antiperspirant actives.

The limitations of claims 24-28 are taught by '534 in view of '070 and further '096:

- '534 teach a composition comprising hydrocarbon oils and mineral oils (column 6, lines 24-33), alkylene/arlene diblock and triblock polymers (Table 1, column 2, lines 34-46, and column 6, lines 24-33), and an aromatic ester oil, such as

benzoate ester or Finsolv TM (column 6, lines 34-44). The composition advanced by '534 can be used as an **antiperspirant** (column 7, line 6). '534 teach that the blend of diblock and triblock polymers is formed in an admixture with a carrier vehicle such as a natural or synthetic hydrocarbon oil or mixture thereof and that the mixture will comprise about 1-20 wt % of the total weight (column 6, lines 24-37). '534 teaches that the hydrocarbon oil should be a liquid from 0 up to about 200 °C (column 6, lines 28-31).

- Furthermore, according to '534, the proportion of chemicals can be altered based on the desire to produce a fragile, flexible, transparent, translucent or opaque gel (column 6, lines 45-53). It is the examiner's position that modifying and optimizing the proportion of chemical components, based on the particular application, without adversely affecting the skin is within the scope of the skilled artisan. In short, one of ordinary skill in the art at the time the invention was made would have the ability to refine and optimize the composition.
- '534 does not teach an antiperspirant composition comprising an organic wax or a particulate antiperspirant active.
- However, '070 teach the advantage of adding an organic wax, such as microcrystalline wax, to a gel-based deodorant composition (column 5, lines 40-52). According to '070, organic waxes, such as microcrystalline wax, can advantageously modify the consistency of deodorant compositions (column 5, lines 40-52). '070 teaches that natural waxes and polyethylene waxes can be added and all have a melting point greater than 80 °C (column 5, lines 47-52).

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'070 also teaching a deodorant composition comprising a "deodorant active agent" may be chosen from **antiperspirant** compounds, such as alum salts, aluminum salts, zirconium salts and aluminum and zirconium salts (column 2, line 19-50).

- '534 and '070 do not teach a composition comprising a particulate antiperspirant active.
- However, '096 teach a composition comprising from about 0.5 - 60% of an **antiperspirant** active in the form of particulate solids (column 8, lines 52-65). According to '096, salts of aluminum and zirconium are preferred antiperspirant actives (column 9, lines 9-14). In addition, according to '096, a composition comprising antiperspirant particles of less than 100 microns provides a relatively low amount of visible residue performance.
- It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of '534, '070, and '096. One of ordinary skill in the art would have been motivated to add an organic wax, such as microcrystalline wax, to the composition proposed by '534 because both teach antiperspirant compositions comprising mineral oil and diblock or triblock copolymers, and the organic waxes as taught by '070 can advantageously modulate consistency of deodorant compositions, one of ordinary skill in the art. Based on the teachings of '070, there is a reasonable expectation that the addition of an organic wax to a deodorant-based composition would effectively modulate the consistency of said composition. As such, it would have been

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obvious to one of ordinary skill in the art at the time the invention was made add an organic wax to the invention advanced by '534 in view of the teachings of '070. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was to combine the teachings of '534, '070 with '096 and produce a deodorant composition comprising hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, particulate deodorant active agents, and an aromatic ester oil, such as benzoate ester or Finsolv TM. The person of ordinary skill in the art would have been motivated to add particulate deodorant active agents to the deodorant composition advanced by '534 because a composition comprising antiperspirant particles of less than 100 microns provides a relatively low amount of visible residue. Based on the teachings of '096, '070, and '534, it is expected that the addition of antiperspirant particles to a composition comprising organic waxes, hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, and aromatic ester oils would result in an effective deodorant with a relatively low amount of visible residue performance. Based on the teachings of '096, it is also expected that salts of aluminum and zirconium would be effective antiperspirant actives.

The limitations of claims 29-35 are taught by '534 in view of '070 and further '096:

- '534 is taught above.
- '534 does not teach an antiperspirant composition comprising an organic wax or a particulate antiperspirant active.

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- However, '070 is taught above and teaches organic wax. '070 also teaching a deodorant composition comprising a "deodorant active agent" may be chosen from **antiperspirant** compounds, such as alum salts, aluminum salts, zirconium salts and aluminum and zirconium salts (column 2, line 19-50).
- '534 and '070 do not teach a composition comprising a particulate antiperspirant active.
- However, '096 teach a composition comprising from about 0.5 - 60% of an **antiperspirant** active in the form of particulate solids (column 8, lines 52-65).

According to '096, salts of aluminum and zirconium are preferred antiperspirant actives (column 9, lines 9-14). '096 teaches that the weight percentage of active is calculated on the anhydrous metal salt exclusive of complexing agents such as glycine, glycine salts, etc (column 8, line 65-column 9, line 1). '096 teaches that the salts are preferably aluminum halides, aluminum chlorohydrate, etc and zirconium salts complexed with aluminum and glycine (ZAG complexes) (column 9, lines 20-23 and lines 54-59). In addition, according to '096, a composition comprising antiperspirant particles of less than 100 microns provides a relatively low amount of visible residue performance.

- It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of '534, '070, and '096. One of ordinary skill in the art would have been motivated to add an organic wax, such as microcrystalline wax, to the composition proposed by '534 because both teach antiperspirant compositions comprising mineral oil and diblock or triblock

copolymers, and the organic waxes as taught by '070 can advantageously modulate consistency of deodorant compositions, one of ordinary skill in the art. Based on the teachings of '070, there is a reasonable expectation that the addition of an organic wax to a deodorant-based composition would effectively modulate the consistency of said composition. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made add an organic wax to the invention advanced by '534 in view of the teachings of '070. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was to combine the teachings of '534, '070 with '096 and produce a deodorant composition comprising hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, particulate deodorant active agents, and an aromatic ester oil, such as benzoate ester or Finsolv TM. The person of ordinary skill in the art would have been motivated to add particulate deodorant active agents to the deodorant composition advanced by '534 because a composition comprising antiperspirant particles of less than 100 microns provides a relatively low amount of visible residue. Based on the teachings of '096, '070, and '534, it is expected that the addition of antiperspirant particles to a composition comprising organic waxes, hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, and aromatic ester oils would result in an effective deodorant with a relatively low amount of visible residue performance. Based on the teachings of '096, it is also expected that salts of aluminum and zirconium would be effective antiperspirant actives.

Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,403,070 B1 ('070) in view of US Patent 6,986,885 ('885).

The limitations of claims 1-8 are taught by '070 and further '885:

- '070 teach a deodorant composition comprising a deodorant active agent, such as aluminum or zirconium salts (column 2, lines 30-34), mineral oil (column 3, line 11), and di or triblock copolymers, wherein at least one block copolymer comprises at least one segment derived from styrene (abstract and Examples 1 - 2). The composition advanced by '070 can further comprise a variety of other waxes, such as paraffin waxes and microcrystalline waxes (column 5, lines 40-52). The "structurant system," comprised of wax and di or triblock copolymers, can be in a concentration ranging from 1 - 20% (column 3, lines 2-6). The deodorant active can be in a concentration ranging from 0.1% to 40% and the mineral oil from about 5 - 90% (column 5, lines 26 - 39). According to '070, the deodorant-based composition can be applied to the skin and used in a method for treating body odor (Claims 46-48). It is the examiner's position that modifying and optimizing the proportion of chemical components, based on the particular application, without adversely affecting the skin is within the scope of the skilled artisan. In short, one of ordinary skill in the art at the time the invention was made would have the ability to refine and optimize the composition.

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- Although '070 teaches a composition comprising fatty acid esters, such as isopropyl myristate and isopropyl palmitate, '070 does not teach aromatic ester oil in their deodorant composition.
- However, '855 teach the advantages of adding aromatic ester oil, such as Finsolv TM, to an antiperspirant-based composition (column 4, lines 14-20 and column 5, line 61 - column 6, line 5). Like the instant composition, '885 is semi-solid and anhydrous (abstract and column 3, lines 37-40). According to '855, Finsolv TM can be advantageously used as an emollient in an antiperspirant (column 4, lines 14-20 and column 5, line 61 - column 6, line 5). Specifically, emollients, such as Finsolv TM or isopropyl myristate, help to sooth the skin and can help to maintain a soft, smooth, and pliable skin appearance (column 4, lines 14-20 and column 5, line 61 - column 6, line 5).
- Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of '070 with '885 and produce a deodorant composition comprising a benzoate ester or Finsolv TM. The person of ordinary skill in the art at the time the invention was made would have been motivated to add aromatic ester oil to the deodorant composition advanced by '070 in order to produce a composition capable of maintaining soft, smooth, and pliable skin. Based on the teachings of '070 and '885, it is expected that the addition of aromatic ester oil to a gel-based deodorant would render a composition capable of maintaining soft, smooth, and pliable skin. It should be noted that the use of the instant composition for modifying "syneresis" is

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considered to be a future intended use of the composition and, as such, is given no patentable weight.

The limitations of claims 9-16 are taught by '070 and further '885:

- '070 is taught above and teaches encompasses the claimed percentages and ranges of oil and ratio to structurant system.
- Although '070 teaches a composition comprising fatty acid esters, such as isopropyl myristate and isopropyl palmitate, '070 does not teach aromatic ester oil in their deodorant composition.
- However, '855 teach the advantages of adding aromatic ester oil, such as Finsolv TM, to an antiperspirant-based composition (column 4, lines 14-20 and column 5, line 61 - column 6, line 5). Like the instant composition, '885 is semi-solid and anhydrous (abstract and column 3, lines 37-40). According to '855, Finsolv TM can be advantageously used as an emollient in an antiperspirant (column 4, lines 14-20 and column 5, line 61 - column 6, line 5). Specifically, emollients, such as Finsolv TM or isopropyl myristate, help to sooth the skin and can help to maintain a soft, smooth, and pliable skin appearance (column 4, lines 14-20 and column 5, line 61 - column 6, line 5).
- Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of '070 with '885 and produce a deodorant composition comprising a benzoate ester or Finsolv TM. The person of ordinary skill in the art at the time the invention was made would

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have been motivated to add aromatic ester oil to the deodorant composition advanced by '070 in order to produce a composition capable of maintaining soft, smooth, and pliable skin. Based on the teachings of '070 and '885, it is expected that the addition of aromatic ester oil to a gel-based deodorant would render a composition capable of maintaining soft, smooth, and pliable skin. It should be noted that the use of the instant composition for modifying "syneresis" is considered to be a future intended use of the composition and, as such, is given no patentable weight.

The limitations of claims 17-28 are taught by '070 and further '885:

- '070 teach the advantage of adding an organic wax, such as microcrystalline wax, to a gel-based deodorant composition (column 5, lines 40-52). According to '070, organic waxes, such as microcrystalline wax, can advantageously modify the consistency of deodorant compositions (column 5, lines 40-52). '070 teaches that natural waxes and polyethylene waxes can be added and all have a melting point greater than 80 °C (column 5, lines 47-52). '070 also teaching a deodorant composition comprising a "deodorant active agent" may be chosen from **antiperspirant** compounds, such as alum salts, aluminum salts, zirconium salts and aluminum and zirconium salts (column 2, line 19-50).
- Although '070 teaches a composition comprising fatty acid esters, such as isopropyl myristate and isopropyl palmitate, '070 does not teach aromatic ester oil in their deodorant composition.

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- However, '855 teach the advantages of adding aromatic ester oil, such as Finsolv TM, to an antiperspirant-based composition (column 4, lines 14-20 and column 5, line 61 - column 6, line 5). Like the instant composition, '885 is semi-solid and anhydrous (abstract and column 3, lines 37-40). According to '855, Finsolv TM can be advantageously used as an emollient in an antiperspirant (column 4, lines 14-20 and column 5, line 61 - column 6, line 5). Specifically, emollients, such as Finsolv TM or isopropyl myristate, help to sooth the skin and can help to maintain a soft, smooth, and pliable skin appearance (column 4, lines 14-20 and column 5, line 61 - column 6, line 5).
- Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of '070 with '885 and produce a deodorant composition comprising a benzoate ester or Finsolv TM. The person of ordinary skill in the art at the time the invention was made would have been motivated to add aromatic ester oil to the deodorant composition advanced by '070 in order to produce a composition capable of maintaining soft, smooth, and pliable skin. Based on the teachings of '070 and '885, it is expected that the addition of aromatic ester oil to a gel-based deodorant would render a composition capable of maintaining soft, smooth, and pliable skin. It should be noted that the use of the instant composition for modifying "syneresis" is considered to be a future intended use of the composition and, as such, is given no patentable weight.

The limitations of claims 29-35 are taught by '070 and further '885:

- '070 is taught above. '070 also teaching a deodorant composition comprising a "deodorant active agent" may be chosen from **antiperspirant** compounds, such as alum salts, aluminum salts, zirconium salts and aluminum and zirconium salts (column 2, line 19-50). '070 teaches that the salts are preferably zirconium salts complexed with aluminum and glycine (ZAG complexes) (column 2, lines 47-50).
- Although '070 teaches a composition comprising fatty acid esters, such as isopropyl myristate and isopropyl palmitate, '070 does not teach aromatic ester oil in their deodorant composition.
- However, '855 teach the advantages of adding aromatic ester oil, such as Finsolv TM, to an antiperspirant-based composition (column 4, lines 14-20 and column 5, line 61 - column 6, line 5). Like the instant composition, '885 is semi-solid and anhydrous (abstract and column 3, lines 37-40). According to '855, Finsolv TM can be advantageously used as an emollient in an antiperspirant (column 4, lines 14-20 and column 5, line 61 - column 6, line 5). Specifically, emollients, such as Finsolv TM or isopropyl myristate, help to sooth the skin and can help to maintain a soft, smooth, and pliable skin appearance (column 4, lines 14-20 and column 5, line 61 - column 6, line 5).
- Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of '070 with '885 and produce a deodorant composition comprising a benzoate ester or Finsolv TM. The person of ordinary skill in the art at the time the invention was made would

have been motivated to add aromatic ester oil to the deodorant composition advanced by '070 in order to produce a composition capable of maintaining soft, smooth, and pliable skin. Based on the teachings of '070 and '885, it is expected that the addition of aromatic ester oil to a gel-based deodorant would render a composition capable of maintaining soft, smooth, and pliable skin. It should be noted that the use of the instant composition for modifying "syneresis" is considered to be a future intended use of the composition and, as such, is given no patentable weight.

Response to Arguments

Applicants' arguments filed on 09/25/2006 have been fully considered but they are not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Also, Applicant argues that antiperspirant compositions must be taught, but independent claim 1 does not require an antiperspirant composition, but only a particulate antiperspirant active which is taught in '096.

It should be noted that the motivation to combine references can be different from the ones set forth by Applicant. That is, as long as motivation exists to combine the elements, the problem to be solved does not have to involve controlling syneresis, but

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can be drawn to stability, homogeneity, etc. As such, the examiner respectfully submits that there is motivation to combine the '534 with '070 and further with '096 and the expected result of such a combination is an effective antiperspirant composition.

Also, Applicant argues examples and comparative examples on page 11 of the response are not recognized as unexpected results as they contain no statistical results or evaluation.

Conclusions

The rejections of record are maintained. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany P. Barham whose telephone number is 571-272-6175. The examiner can normally be reached on M-F from 8:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Examiner 1615


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